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EZRA RIPLEY THAYER

EZRA RIPLEY THAYER was born in Milton, Massachusetts, on February 21st, 1866. His father, James Bradley Thayer, was for nearly thirty years a professor in the Harvard Law School, a man of rare scholarship, and one of the most respected and best loved teachers the School has ever had. His mother, Sophia Bradford Ripley, granddaughter of the Reverend Ezra Ripley, of the Old Manse in Concord, Massachusetts, and descended from William Bradford, the early colonial governor, was a highly talented woman of the finest New England type. Their second son, Ezra, combined some of the best qualities of both parents. Educated in the public schools of Cambridge, and after a year with a private tutor at Athens, Greece, in Hopkinson's School for Boys, he entered Harvard College with the class of 1888. After graduation he studied in the Harvard Law School and took his degree as a bachelor of laws in 1891. The following year he served as secretary to Mr. Justice Gray of the United States Supreme Court, and then began the practice of law in Boston with the firm of Warren and Brandeis. In June, 1898, he married Ethel Randolph Clark, and after that made his home in Boston. His widow, a son, James Bradley, and two daughters, Eleanor Arnold and Ethel Randolph, are living. In 1896 Thayer became a member of the firm of Brandeis, Dunbar and Nutter, and in 1900 a partner in the firm of Storey, Thorndike, Palmer and Thayer. In 1910 he was appointed to succeed the late James Barr Ames as Dean of the Harvard Law

School, and giving up his practice devoted himself to teaching and the administration of the School. In 1913 he was offered an appointment to the Supreme Judicial Court of Massachusetts, but declined the offer. On September 14th, 1915, at the age of forty-nine, in the fullness of his powers, and at the beginning almost of what promised to be a most distinguished and useful career in the field of education, he died.

One July day some thirty-five years ago a small boy timidly inquired from an official of the Cambridge High School whether he had passed his examinations and had been admitted to the school. The official asked whether the inquirer thought a fellow who had got more than 90 per cent in all his examinations would pass, and on receiving an affirmative answer told the boy that he had passed. The boy was Thayer, then thirteen or fourteen years old. The promise of this early achievement was more than fulfilled. Thayer easily led his class throughout its college course. Such was his ability that an average of not more than four or five hours a day sufficed for his studies. The rest of his time was given to other pursuits. He played baseball on his class nine, was a member of a number of college societies, and joined in various social activities. In the Law School his intellectual superiority was equally marked. In a class which included not a few exceptionally good men, he was always first and maintained his leadership without exertion.

It is by no means an invariable rule that a first scholar, either in college or in the Law School, makes the best mark in after life. But Thayer's preëminence did not come from the laborious toil of one striving merely for high rank, nor from the superficial aptitude for cramming which may enable a man to acquire for use in examinations information that will never again be at his service. He had extraordinary intellectual powers and capacity, a brain that retained as easily as it absorbed, a memory so tenacious that five years after he had finished the study in the Law School of Ames's Cases on Torts he knew by name and could state the essential facts of each case in the book, more than a hundred and eighty in all. To talk with Thayer on any subject, especially any legal subject, was a keen mental stimulus. His mind to a remarkable degree had the quality described as "edge." Any discussion with him produced an immediate reaction. The most sluggish intellect was

aroused by his animation, while the precision of his mental processes rebuked and punished loose thought and inexact or illogical reasoning.

With such an equipment it was easy to predict success for Thayer as a practitioner, but such equipment alone would not have brought the success that he actually attained. To any matter with which he was entrusted Thayer gave an amount of energy and heart not at all limited by the importance of the subject. He felt that every client was entitled to his best efforts and no pains were too great, no preparation too minute, if calculated to increase the probability of success. Nothing was left to chance, and thoroughly a master of legal procedure and of legal strategy, he overlooked no honorable means of advancing his client's cause. As a junior he was ready and able to assume full responsibility, and relieved his senior of all anxiety lest anything should be forgotten; as senior counsel he made sure that the ground was fully covered. No business turned over to him had to be followed up.

Thayer practiced law in accordance with the highest standards and the best traditions of the bar. Any conduct savoring of pettifoggery or chicane was abhorrent to him, and he could not tolerate such conduct in others. His keen sense of honor would brook nothing questionable. He served for a number of years on the grievance committee of the Boston Bar Association, and as its secretary with characteristic energy and method organized and systematized the work of the committee. The ethics of the profession were more to him than empty platitudes or counsels of perfection. They were moral principles intended for actual guidance. It was a peculiarly happy selection that made him a member and secretary of the committee appointed by the American Bar Association to frame a code of ethics. To the duties of this committee he gave much time, and contributed largely to the result of its labors, a code that has been adopted substantially unchanged by the bar associations of about half the states in the Union.

In 1910 Thayer was asked to become Dean of the Harvard Law School. He had then attained a distinguished position at the bar and had a large and important business. Already his friends looked forward to the possibility and probability of a great judicial career. Acceptance of the appointment meant a renunciation of the active practice of the law and a serious diminution in his chances

of an appointment to the bench. Although he felt at the time no decided inclination for teaching, service in the Law School appeared to Thayer as the higher opportunity for usefulness. He accepted the appointment and threw himself with his whole heart and soul into the new work. When three years later the offer came of a position on the Supreme Judicial Court he declined it, feeling that whatever his personal inclinations, duty required that, having set his hand to the plough, he should not turn back, especially at a time when doing so would be peculiarly embarrassing to the School.

The five years of Thayer's service as Dean showed a rapid and steady development. To maintain the standard set by Dean Ames as a teacher and an administrator was a task possible only for the highest ability. To do this, coming from active practice, without any real interval of preparation, was possible only for the highest ability coupled with extraordinary exertions. Thayer had the ability and made the exertions. While he was Dean the Law School suffered no diminution in prestige or in solid progress.

The man who had felt no special inclination to teach and had doubted whether he had any special aptitude for teaching left upon his pupils no doubt of his capacity. Each year of his service increased his reputation among the students. He freely gave them his time far beyond the mere requirements of the classroom. Regardless of his own convenience, he remained after every lecture as long as any individual was left who desired to ask questions or discuss legal problems. Intellectual powers such as had brought him success in practice it is not easy to turn at once with equal success to teaching; but the intellectual activity, the swiftness of thought, the closeness of reasoning, the stimulating personality, the untiring devotion to work in hand that had always distinguished Thayer, rendered him in a constantly greater degree inspiring as a teacher.

In the administrative work of his office Thayer was no less successful. He was confronted with problems arising not only from the rapidity with which the School had grown, but also from a change of view as to the proper functions of the law and as to the duties of lawyers. He felt the growing and well-founded belief in the community that the law did not satisfactorily fill its place in

modern civilization, that lawyers did not render to the community the service due from them. He understood that these deficiencies must be remedied. To ensure not only the future success of the School but also the full discharge of its obligations required a development in harmony with these newer ideas. He secured the services of the ablest representatives of such views and started the School on a new era of leadership and supremacy. Thayer was not actuated in this course by any spirit of opportunism. Although brought up in the Common Law and not by nature or by training inclined to extreme sociological views his mind was unusually receptive and, like the Common Law itself, capable of continuous growth and expansion. He could appreciate the force of new theories and had the breadth of outlook carefully to consider and if convinced to adopt such theories even if opposed to his preconceived opinions. It was from full conviction that he used his influence and power as a rejuvenating force.

As to the methods and policy of the School in matters of instruction Thayer had definite and clear-cut views. He knew that true education, especially in the law, consists primarily in stimulating the search for truth and cultivating the spirit of individual and independent analysis and investigations. He knew that these results are best obtained by the play upon the student of minds of differing types. He sought to organize the course of instruction with these ends in view. His ambition was to maintain and raise the standard and to make the Harvard Law School not only a centre, but the centre, of legal education. Mere size was not important. To achieve his purpose required that the material should be of the best, that the School should appeal to and serve, not the greatest number, but the highest type, of students. In the first year of his administration the faculty increased the amount of work required in the second and third years from ten hours a week to twelve and provided that no one could remain after the second year who failed to get for that year at least five per cent above the usual passing mark. These changes caused a falling off in the number of students; but Thayer rightly felt that the improvement in quality was necessary in order successfully to maintain the pre-eminence of the School and to preserve with large classes that "absorbed and excited interest" which, as he said, had always marked the work of its best scholars. Fully conscious himself of

the exacting requirements of a real legal education and of the paramount importance of such an education adequately to fit a man for a worthy legal career, he deprecated the practice of students engaging in occupations such as created a division of interests. Any one who recognizes the necessity of elevating the legal profession, of maintaining it as a real profession aiming primarily at efficient service and not at pecuniary gain, will fully sympathize with such a policy, and must feel that in following this course Thayer was rendering service of great value, not only to the School but to the public, a service the more necessary at a time when the practice of the law tends to be regarded only as a desirable means of earning a living, and the bar is in much need of an awakening to its public responsibilities.

A means towards further establishing the reputation of the School and promoting the cause of legal education was the introduction of postgraduate study for the degree of doctor of laws. It is hardly possible that such a course of study should ever be undertaken by numbers commensurate with the cost, but to provide the opportunity and so increase interest in law as a science, to turn out even a small number of real legal scholars, appeared to Thayer clearly a part of the duties of the Law School. Nor can it be doubted that the resulting benefit is worth both to the community and to the School far more than the cost.

Education was not to Thayer mere pedantry. He valued it as an essential part of the equipment of a man prepared to play his part in the world. Not himself a deeply learned black letter lawyer, he could sympathize with those who were, if their interest in such learning did not exclude interest in law as a human science. To him the law was not a bundle of dry husks; it was a part of civilization. He loved it as a living and growing thing. A firm believer in the common law, he was deeply interested in it historically, but more deeply interested in its development and in working out the processes of adjustment required by changing conditions. His devotion to legal principles never blinded him to the necessity of administering justice. In an excellent address last winter before The Law Association of Philadelphia he pointed out the urgent importance of adapting legal methods and procedure to the conditions and needs of modern life. His mind was too active to dwell only on the past, but his judgment was too sound to be

led astray by ill-considered suggestions of changes proposed as panaceas.

Taking his position in the Law School was far from meaning for Thayer a life of academic seclusion. He realized the importance of remaining in close contact with active professional life, even if his intense interest in the affairs of the world relating to law would have permitted any such retirement. While abstaining wholly from practice, he continued to serve on the council of the Boston Bar Association, became a member of the executive committee of the Massachusetts Bar Association, and kept fully abreast of all that was going on in legal circles.

Thayer had perhaps a finer legal mind than any man in his generation. Some might excel him in profound learning as to special subjects, some in subtlety of thought, some in forensic oratory. But none excelled him in the combination of perception, concentration, power of analysis, ability to grasp essential facts, understanding of fundamental principles, openness of mind, readiness to apprehend and accept or combat opposing views, united with capacity to apply all his powers and all his knowledge to the subject before him. His talents were such as assured and entitled him to his success as a practitioner, and his even greater growing success as a teacher and an educator. The same talents would equally have assured his success as a judge had he taken a place upon the bench.

The qualities that endeared Thayer to a wide circle of loving and admiring friends are seldom found coupled with such a high intellectual endowment. A fluent and always interesting talker, he was at the same time an interested listener. His buoyancy of spirit and unusually keen sense of humor rendered him a delightful companion. Devoted to his duties, whatever they might be, he was not absorbed in them to the exclusion of any care for the concerns of others. He responded immediately and fully to any call for sympathy. Capable of biting sarcasm, he seldom if ever employed his weapon to inflict unmerited wounds. Loyal to the core and incapable of a mean or dishonorable act, he deserved and received unbounded confidence. Fond of argument and justly tenacious of his opinions, he was not dogmatic and was singularly open to conviction and ready to acknowledge a mistake. Quick to discern and to scorn any sham, he was tolerant of inexperience

and of honest lack of capacity, while no one was more ready to recognize or more eager to commend ability and merit in another, whether friend or opponent. Always generous, he was happily able to gratify his wish to help others, and unostentatiously extended aid to many. One young man of promise, whose good work he had noticed, was when starting in practice relieved of a serious handicap by Thayer's unsolicited offer to guarantee his office rent for a year. Without the knowledge of his friends he devoted far the greater part of his salary from the Law School to the assistance of needy students and others.

Thayer was a man of strong likes and dislikes and quick to form opinions. But he was by nature just and intellectually honest. He did not allow his prepossessions or his prejudices to govern him or adhere to an opinion once formed if it did not stand the test of analysis. He was unflinching in his judgments of men's acts, but not from any hardness. Many times in his work on the grievance committee of the Bar Association he gave a helping hand to men whose conduct he had justly condemned and assisted them in their efforts to make amends and to reform. His relations to his family were ideal and in the midst of exacting work his domestic life was a constant solace. The intellectual side of his nature never overshadowed the human side. As he matured his character and disposition mellowed; he became increasingly considerate of the feelings of others and any early tendency towards the expression of hasty judgments or towards thoughtless cynicism of speech disappeared. His mind shone as brightly as ever, but with a softer light.

The burden that Thayer assumed in becoming Dean of the Law School was very heavy. His character and ideals made acceptance of the post a pledge of all that was in him, of his very life, to successful performance of its duties. His nature was not of the easy-going sort that can be satisfied by avoiding failure, nor was his temperament such that he could forget his responsibilities and give himself up care free to relaxation. To do all things that the interests of the School required, to leave nothing undone that could benefit the School, to develop his own talents to their fullest extent, were with Thayer paramount obligations to which other considerations were made to give way. Praise was insufficient if he failed to satisfy his own standards. His position made demands upon him

which grew with what they fed on; his task was never finished, even temporarily; his mind worked unceasingly. After five years of unsparing labor and constant strain his health became impaired, and this led to his death, in the prime of life and the prime of his usefulness.

The loss suffered by Thayer's death cannot be measured. To the community and to the Law School he gave the service of his great intellectual powers and ripening experience. To his students he gave without stint or measure the best fruits of a wonderful mind and an almost inspired enthusiasm. To his friends he gave a heart pure as a child's, tender as a woman's, strong as a man's. The work of such an one may be done by others, but his place can never be filled.

William H. Dunbar.

It was a large undertaking to succeed James Barr Ames, cut off at the high tide of his fame as a scholar, a teacher and an administrator. It was a large achievement to meet the measure of that undertaking in five brief and heavily-burdened years. After Thayer had proved himself equal to the exacting measure set up by those who had gone before him and had given promise of becoming not the least of that goodly company, it was indeed a hard fate that took him off before the promise could be fulfilled.

Thayer had scant opportunity to show to the world his powers as a legal scholar. A prize essay, written while a candidate for his professional degree, a paper in the Harvard Law Review on a difficult point in the law of torts, three bar-association addresses, one of them published reluctantly after much urging, and a brief note as to the function of teachers of law, give a wholly inadequate picture. Intense conscientiousness impelled him to patient canvassing of all the authorities. He was almost morbidly anxious to be absolutely accurate and to present nothing that was not well matured. He was severely critical and consistently applied his critical powers to his own work. Accordingly he made repeated redrafts of everything that he wrote, and in any event would never have written much in point of quantity. "After all," he said more than once, "the reputation of the school will suffer no injury from

what I do not write." But he had a keen scent for the cases which were significant in the maze of contemporary law reports, a power of reducing jural situations to their lowest terms, and a faculty of seeing through a mass of legal materials and perceiving a principle by which the inert mass might be given life. Moreover, although a man of positive convictions, he was able to detach himself from prepossessions, to perceive and duly weigh all relevant considerations, and to look at the larger aspects of a question, in a time when so many legal questions are social questions also, without losing his footing upon the solid ground. To some extent he had exhibited these qualities in the little that he published. To some extent they are shown in more than one unfinished manuscript to which he had devoted much thought and labor, one of which, it is hoped, may prove ripe for publication. To some extent they are witnessed by a mass of patiently elaborated notes of lectures, critically revised from year to year, which in time would have borne fruit in contributions no less significant than those of his father. Yet these are but feeble testimony, and only those whose fortune it was to listen to him as he discussed the subjects of his study with the grasp and assurance of a master can know how truly we have lost a scholar.

If it was hard to follow Ames the scholar, it was even more hard to follow Ames the teacher, coming to the work of teaching, as Thayer did, for the first time at the age of forty-five. But Thayer had a high sense of the importance of the teaching function and set himself to master this part of his work. He studied a class as carefully as a trial lawyer studies a jury. He was wont to note upon the cover of each examination book, without knowing whose book it was, his impressions of the writer derived from reading it, and he kept careful memoranda with respect to the work, the capacity and the mental characteristics of his students. Also he devoted much time to consideration of methods of presentation, often recording after each lecture his impressions of what he had done and what he had left undone during the hour. This conscientious preparation joined to penetrating analysis, a merciless cross-examining elenchus developed in the forum, to which he submitted his own views no less than those of others, and an intellectual honesty that shirked no difficulties and tolerated no pretense, made itself felt in steady gain in his hold upon classes from the beginning

of his teaching. He had already become a teacher of the first order, and much of the results of his critical study of his vocation was yet to become manifest.

As an administrator Thayer was charged with maintaining and developing a great tradition. In his relations with the students he maintained the standard set by Ames, seeking to have a real personal acquaintance with every student and giving his time to conferences without stint. He was aware of the responsibility imposed upon the school by the possession of its library and gave anxious consideration to the growth of the library in its relation to the income of the school. He was no less aware that the curriculum could not remain for all time as it had come down to him and studied diligently how to improve it. Most of all he came to see the part which law schools and in particular the Harvard Law School may play, if they will, in the period of growth upon which our law has manifestly entered. Nor was he dismayed by the difficulties involved. On the one hand he had no doubt that the school must hold fast to the work of training lawyers for the practice of their profession to which it had been devoted heretofore. On the other hand he recognized that, without abating a jot of this, something more was demanded in an era of legal development no less rich in possibilities than that in which the school under Story's leadership was a factor in the reception of English law and the building thereon of a common law for America. With every inclination from training and environment to confine himself to the lines on which the school had developed in the past, he had the vision to see the service which the law school of today is called to perform and his sensitive conscience and unswerving regard for truth impelled him to heed the call. Happily his critical temper and well-reasoned firmness of purpose enabled him to avoid an over-ambitious program on the one side and an unwise narrowness on the other. In the opinion of a foreign critic, who is not likely to lay too much stress on the side of purely professional training, the plan he had laid out needs little alteration to give for our time "absolutely the best school for lawyers."

It is not easy for one who had known him so short a time to speak adequately of Thayer personally. What stands out permanently in one's memory of him is his conscientiousness, his loyalty, his devotion to duty, his considerateness of others. Not sanguine

and with little outward enthusiasm, he saw so clearly and strode in the path he saw before him so courageously as to derive from his conscience the *élan* which others derive from their temperament. Even a certain depression, born of his critical faculties and his sensitive conscience, was balanced by a sound sense of values and a keen sense of humor. His wit was Greek in its gracefulness and playfulness. Indeed the reading of Greek, which he kept up to the last, had left its mark upon him and one might think of him as one of the well born, well bred, well taught, widely cultured youth with whom Socrates practiced his dialectic. And even as Socrates taught, he thought consistently and he lived consistently—

Χερσὶν τε καὶ ποσὶ καὶ νόφ τετράγωνον, ἄνευ ψόγου τετυγμένον.

Roscoe Pound.